

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service--When Required. Unless otherwise prescribed by these rules, or by order of the court, every pleading and other paper shall be served upon each of the parties.

(b) Service--How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon the party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery is made by: handing a copy to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Service--Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleadings and service thereof upon the plaintiff constitute due notice of it to the parties. A copy of every order shall be served upon the parties in such manner and form as the court directs.

(d) Filing--When Required. All pleadings and other papers required to be served upon a party shall be filed with the court immediately after service, unless otherwise prescribed by these rules, or by order of the court. Depositions upon oral examinations and interrogatories, requests for documents, requests for admission, other discovery documents, and answers and responses

thereto shall not be filed unless by order of the court on motion or on its own initiative, or for use in the proceeding.

(e) Filing--How Made. The filing of pleadings and other papers with the court shall be made by filing them with the clerk of the court, except that the judge to whom an action is assigned, or a matter is referred, may permit pleadings and other papers pertaining thereto to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing with the clerk of the court shall be made by delivery or by mailing to: The Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001; or by delivery to the clerk at places other than New York City when the papers pertain to an action being tried or heard at that place. Filing is completed when received, except that a pleading or other paper mailed by certified or registered mail properly addressed to the clerk of the court, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of mailing.

(f) Filing of Summons and Complaint by Mail. When an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail as prescribed by these rules, the mailing shall be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(g) Proof of Service. Unless otherwise prescribed by these rules, or by order of the court, papers presented for filing shall contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the paper filed. The clerk may, for good cause shown, permit papers to be filed without acknowledgment or proof of service but shall require proof to be filed promptly thereafter.

(h) Filings Containing Business Proprietary Information in an Action Described in 28 U.S.C

§1581(c) In an action described in 28 U.S.C. §1581(c), a pleading, motion, brief or other paper containing business proprietary information shall identify that information by enclosing it in brackets. A party shall file and serve a pleading, motion, brief or other paper in accordance with any deadline established by these rules or by order of the court. A non-confidential version in which the business proprietary information is deleted shall accompany a confidential version of a pleading, motion, brief or other paper. However, when the original pleading, motion, brief or other paper includes the statement, "Bracketing of Business Proprietary Information not Final for One Business Day after Date of Filing" on the cover of every document containing business proprietary information and on each page containing business proprietary information, then a party may file and serve the non-confidential version within one day of the filing of that pleading, motion, brief or other paper, together with a complete revision of the original filing, if necessary, that is identical to the original in all respects except for any bracketing corrections. When the original states that the bracketing is not final for one business day after the date of filing, recipients of the document may not, until the bracketing is finalized, disclose the contents of the document to anyone not authorized to receive business proprietary information in the action.

PRACTICE COMMENT: When the clerk concludes that exigencies so require, he may permit a pleading or paper to be filed by facsimile transmission or similar process. Service by such process may be made with the consent of the party to be served. Certified or registered mail, return receipt requested, must be used, as prescribed in Rule 5(f), when an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail.

PRACTICE COMMENT: When a party is represented in an action by more than one attorney of record, the party shall designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

PRACTICE COMMENT: When service is to be made upon a party represented by an attorney, service shall be made upon the attorney of record, unless otherwise ordered by the court.

PRACTICE COMMENT: When proof of service is made in the form of a statement, as prescribed in Rule 5(h), and the person served is an attorney, the statement shall identify the name of the party represented by the attorney served.

PRACTICE COMMENT: Rule 5(e) of the Federal Rules of Civil Procedure provides that “the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.” By contrast, USCIT Rule 5 contains no such limitation. Instead, the responsibilities and limitations of the Clerk of the United States Court of International Trade with respect to the acceptance or rejection of a paper submitted for filing are contained in USCIT Rule 82(d), which has no counterpart within the Federal Rules of Civil Procedure.

PRACTICE COMMENT: Rule(h) applies a “one day lag rule” to a submission containing business proprietary information. Practitioners should note that this rule does not act to extend any deadline set forth in these rules or by order of the court. Its only effect on the timing of a submission is to provide one day for a party to prepare a non-confidential version of its submission and to prepare any correction in the bracketing of business proprietary information. In making special provision for filings in an action brought under 28 U.S.C. §1581(c), this rule likewise does not excuse those filings from other requirements, such as those in Rule 81(h), applicable to a submission containing confidential information.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; May 27, 1998, eff. Sept. 1, 1998.)